

IOWA DEPARTMENT OF NATURAL RESOURCES

**IN THE MATTER OF
VOGEL PAINT AND WAX CO.**

CONSENT ORDER

NO. 2003-HC- 02

ARTICLE I. SUMMARY

On or about July 23, 1990, the Iowa Department of Natural Resources (hereinafter "the Department") and Vogel Paint and Wax Company (hereinafter "Vogel") entered into Consent Order No. 90-HC-10 regarding contamination emanating from property located in the West ½ of the Northwest ¼ of Section 29, Township 94 North, Range 45 West in Sioux County, Iowa. Article VI of Consent Order No. 90-HC-10 set forth required actions, including:

1. Submittal to the Department of a design report and final plans and specifications for construction of the remedy prescribed in the September 20, 1989 Record of Decision (ROD) and modifications to the site health and safety plan (HASP) and quality assurance project plan (QAPP).
2. Initiation and completion of construction of soil and groundwater treatment facilities within specified dates. (A target date for completion of soil treatment was also specified that was subsequently dismissed due to technical considerations.)
3. Submittal of an operation and maintenance (O&M) plan and a monitoring plan.
4. Operation and maintenance of the groundwater remedial facilities until such time that

contaminant levels in groundwater remain below prescribed standards for a least 3 consecutive months. The groundwater remedial system was then required to remain in a standby mode for one year in case monitoring revealed a need to reactivate it.

5. Submittal of various progress reports.

Requirements under items 1, 2, and 3 have been completed to the satisfaction of the Department. This order clarifies terms for compliance with item 4, which the Department determines to be substantially completed. The provisions of this order replace the requirements under items 4 and 5. This consent order prescribes the remaining actions necessary for final closure of the Site, including: 1) the relatively minor remaining actions necessary to complete the enhanced free product removal per the October 2000 ESD, 2) actions necessary for documenting satisfactory completion of groundwater remediation activities, and 3) requirements for institutional controls.

This Consent Order is entered into to formalize Vogel's commitment to complete remedial measures as prescribed in the September 20, 1989, Record of Decision (ROD), as modified by the July 20, 1994 and October, 2000 Explanation of Significant Differences (ESDs) and to clarify remaining actions necessary to do so. This Consent Order replaces the prior Consent Order. No. 90-HC-10.

ARTICLE II. JURISDICTION

This Consent Order is entered into pursuant to Iowa Code sections 455B.175.

ARTICLE III. STATEMENT OF FACTS

1. Vogel is owner of real property which is located in the West ½ of the Northwest ¼ of Section 29, Township 94 North, Range 45 West in Sioux County, Iowa.
2. Vogel has completed to the satisfaction of the Department the actions required in items 1, 2, and 3 of Article VI. of Consent Order No. 90-HC-10.
3. The Site has been addressed in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) program administered by the U.S. Environmental Protection Agency (EPA). The Site was placed on the CERCLA National Priorities List (NPL) in June of 1986. The Department has been lead agency for implementation of CERCLA activities at the Site with the support of EPA Region VII. The Department will continue as the lead agency through implementation of this Consent Order.
4. The ROD was signed by the Administrator of the Iowa Department of Natural Resources, Environmental Protection Division, on September 14, 1989, and by the Regional Administrator of the United States Environmental Protection Agency, Region VII on September 20, 1989. Modifications to the ROD were subsequently documented in July 1994 and October 2000 ESDs. The ROD, as modified by the ESDs, is hereby made part of this Consent Order.
5. The selected remedy prescribed in the ROD and as modified by the July 1994 ESD is excavation and bioremediation/landfarming of contaminated soils from the former area used by Vogel for the disposal of industrial wastes, and a groundwater remediation system consisting of five recovery wells (designated as RW-1, RW-2, RW-3, RW-4, and/or RW-5) that pump to an air stripper for treatment with discharge of treated water by infiltration back into the site aquifer

(hereinafter referred to collectively as "the groundwater remediation system"). The excavation and bioremediation/landfarming of contaminated soils were completed in 1999 to the satisfaction of the Department.

6. The October 2000 ESD prescribed enhanced free product removal actions consisting of excavation of the free product area with contaminated soils moved above the water table followed by soil vapor extraction (SVE)/bioventing treatment of the contaminated soils. These free product removal actions, while involving soils, are intended to address groundwater contamination. The excavation portion of the enhanced free product removal prescribed was completed in December 2000, including installation of the SVE/bioventing ventilation piping. Subsequent studies have shown natural air movement through the ventilation piping to be nearly as effective at attenuating residual contaminants in soils as induced air movement. The October 2000 ESD called for certain actions to deal with air emissions from the SVE/bioventing system, which have subsequently been found to be unnecessary. Therefore, the enhanced free product removal activities prescribed in the October 2000 ESD are considered to be substantially completed.

ARTICLE IV. CONCLUSIONS OF LAW

1. Hazardous substances were spilled, leaked, or otherwise released from the Vogel Site prior to regulations and the Site is, therefore, a "hazardous waste or hazardous substance disposal site" as defined in Iowa Code Section 455B.411(1).

2. The substances described in the ROD that have been found in the soils and groundwater at the Site are "hazardous substances" as defined in Iowa Code Section 455B.381(5).

3. The substances previously described and present in the analyses of the groundwater at or nearby the Site are each "pollutants" as defined in Iowa Code Section 455B.171(13).

4. The past, present, or potential migration of the hazardous substances from the Site constitutes an actual and/or threatened "release" and a "hazardous condition" as defined in Iowa Code Section 455B.381(8) and 455B.381(4), respectively.

5. Vogel is a "person" as defined in Iowa Code Section 455B.171(11).

6. The past, present, or the potential migration of pollutants from the Site into the groundwater constitutes a prohibited discharge to the waters of the state as defined in Iowa Code Section 455B.186.

7. Some of the substances previously described and present in the analyses of the groundwater at or nearby the Site as part of CERCLA action have exceeded "action levels" as defined in the Department's Rule 567—133.2 (455B, 455E) Iowa Administrative Code (IAC), "statewide standards" as specified in Rule 567—137.5 (455H) IAC, and "maximum contaminant levels" (MCLs) as defined in Rule 567—40.2 (455B) IAC which are consistent with the federal Safe Drinking Water Act. In accordance with the October 2000 ESD, statewide standards are now considered to be the applicable or relevant and appropriate requirements used for determining compliance for groundwater. The current statewide standards for these substances which have been attributed to the Site (hereinafter the "contaminants of concern") as presented in the ROD are listed below. The statewide standards as listed below are not subject to change with respect to the implementation of this Consent Order. Additional contaminants of concern may be identified in accordance with Rule 567—133.3 (455B, 455E) IAC.

<u>Substance</u>	<u>Statewide Standard (mg/l)</u>
Arsenic	0.01
Chromium (total)	0.1
Cadmium	0.005
Lead	0.015
Benzene	0.005
Ethylbenzene	0.7
Methyl Ethyl Ketone	4
Toluene	1
Xylenes	10
1,2-Dichloropropane	0.005
Methylene Chloride	0.005

8. Vogel is the "person having control over a hazardous substance" released at the Site as defined in Iowa Code Section 455B.381(7).

ARTICLE V. DETERMINATIONS

Based on the Statement of Facts and Conclusions of Law set out above, the Department has determined that:

1. An actual release of pollutants or contaminants from the Site into the soil and groundwater has occurred.
2. The actual release of pollutants or contaminants from the Site may present an

imminent or potential danger to the public health or welfare.

3. The actual release of pollutants or contaminants from the Site to the groundwater has degraded an aquifer that is in actual or deemed to be of potential use as a water resource.

ARTICLE VI. ORDER AND CONSENT

The activities described herein are intended to complete the selected remedial actions for groundwater prescribed in the September 20, 1989, ROD as modified by the July 1994 ESD and the October 2000 ESD.

The actions required by this Consent Order are in accordance with Iowa Code sections 455B.175; are consistent with the National Contingency Plan, 40 CFR Part 300; and are necessary to protect the public health and the environment.

1. Vogel will discontinue operation of the groundwater remediation system. The groundwater remediation system will be maintained in a standby mode until its reactivation is required based on monitoring results per Paragraph 6 herein or all the terms of this consent order are satisfied per Paragraph 8 herein. While in the standby mode the groundwater remediation system will be started on a semiannual basis to ensure continued operability. Vogel will document the semiannual startup of the groundwater remediation system in the next quarterly report per Paragraph 5 herein.

2. Vogel will conduct weekly monitoring of the influent and effluent from the groundwater remediation system during any subsequent periods of operation (excluding the semi-annual startups to ensure operability) and will report the results to the Department on a quarterly

basis per Paragraph 5 herein. The parameters to be monitored and associated discharge limits will continue to be as follows:

<u>Parameter</u>	<u>Discharge Limit (mg/l)</u>
Benzene	0.005
Ethylbenzene	0.025
Toluene	0.01
Xylene	0.100

Not all of the parameters listed in Article IV, Paragraph 7 herein are included in the above list. This is because the monitoring of the influent water to the groundwater remediation system since 1991 has not identified the other parameters at levels above their associated discharge limits.

3. Vogel will complete activities involving enhanced free product recovery that have been initiated to comply with the October 2000 ESD. The final means of conducting SVE/bioventing and free product removal are the remaining enhanced free product recovery activities. Vogel will prepare a work plan for these activities and submit it to the Department within sixty (60) days of the effective date of this order. Vogel will complete all work necessary to implement work plan within ninety (90) days of approval of the work plan by the Department. Vogel will continue to execute the activities called for in the work plan until all provisions of this Consent Order are satisfied in accordance with Paragraph 8 below.

4. Vogel will modify the 2002 GROUNDWATER MONITORING PLAN WITH QUALITY ASSURANCE/QUALITY CONTROL (QA/QC) PROCEDURES dated 12/02/02 (the

modified version as approved by the Department hereinafter referred to as "the monitoring plan") in accordance with the provisions herein. Monitoring parameters will be modified to include all contaminants of concern listed in Item 7. Article IV. herein. The monitoring plan will include a minimum of two additional monitoring wells located between the southern extent of the contaminant plume and monitoring wells TC-23, GMW-7, and MW-5 ("the southern Site perimeter monitoring wells" hereinafter). The new monitoring wells will be designated as "guard wells". The purpose of the guard wells will be to provide an indication of contaminant migration that may cause an exceedence of statewide standards at the Site's southern boundary — as monitored in the southern Site perimeter monitoring wells — well in advance of such an exceedence actually occurring.

The guard wells will normally be sampled at the same frequency and for the same parameters as other monitoring wells. If a contaminant is found in an guard well at a concentration in excess of a statewide standard, monthly monitoring will be instituted in all guard wells and the southern Site perimeter monitoring wells. Monthly monitoring of these wells will continue until contaminant levels do not exceed statewide standards in any of the wells for three consecutive months and monitoring results do not indicate an increasing trend in contaminant concentrations in any of the guard wells or southern Site perimeter monitoring wells that would suggest an exceedence of a statewide standard in a southern Site perimeter well within three months.

If a contaminant is found in any monitoring well that is designated in the monitoring plan as a Site perimeter monitoring well at a concentration in excess of a statewide standard, monthly monitoring of that well will be instituted and will continue until contaminant levels do not exceed

statewide standards for three consecutive months and monitoring results do not indicate an increasing trend in contaminant that would suggest an exceedence of a statewide standard within three months.

Any monitoring result that appears to be out of the ordinary and would be the basis for requiring additional action may be verified by follow-up sampling by Vogel. Any such verification sampling will be conducted by Vogel as soon as possible but not to exceed seven days after receipt of the questionable monitoring result. Vogel will notify the Department of the questionable monitoring result within one working day of its receipt and provide the Department with at least forty-eight hours to arrange for splitting of the verification sample. If the Department elects not to split a verification sample, Vogel will collect a duplicate sample for separate analysis. If the highest of the verification sample results is below a level that would trigger startup of the groundwater remediation system per Paragraph 6 herein or would extend the amount of time until the Site can be considered to be clean-up per Items c) or d) of Paragraph 8 herein, the highest of the verification sample results may be substituted for the original sample result, in which case the original sample result will not be used for any subsequent decision. However, a verification sample result cannot be used to dismiss any requirement in this Paragraph for increased monitoring due to a standard being exceeded in a guard or perimeter monitoring well. In this case, the verification sample result will be considered the first of the minimum of three required monthly samples. If the duplicate or split verification sample results differ by more the 50%, Vogel may conduct additional work to verify sample results as approved by the Department.

Vogel will submit the revised monitoring plan to the Department within thirty (30) days of

the effective date of this order. Upon approval by the Department, Vogel will implement the monitoring plan until all provisions of this Consent Order are satisfied in accordance with Paragraph 8.b) below. The Department may require subsequent modifications to the monitoring plan at any such time that monitoring results suggest that the current monitoring plan is inadequate.

5. Vogel shall submit monitoring reports to the Department within 30 days of receipt of the quarterly analytical results from the laboratory. These reports shall include:

- all laboratory data sheets showing analytical results,
- water level measurements from all site monitoring wells,
- weekly volume pumped, if any, from each recovery well,
- weekly free product recovery amounts from each location where free product is recovered,
- a description of the status of activities prescribed in this Consent Order, and
- any anticipated or proposed modifications.

6. If a statewide standard for a contaminant of concern is exceeded in any designated Site perimeter monitoring well for three consecutive months, or if a statewide standard is exceeded in a southern Site perimeter monitoring well at any time within three months of a statewide standards exceedence in an guard well, Vogel will:

- a) place the groundwater remediation system back into operation within 30 days (weather permitting), unless the Department determines that no significant threat to human health or the environment exists as demonstrated by a definitive trend of decreasing contaminant levels. The department will consult with Vogel to determine which recovery well or wells need to be reactivated.

b) resume normal operation of the groundwater remediation system, which includes seasonal shutdown due to cold weather, for at least another year. Then Vogel may again cease operation of the groundwater remediation system at such time that the last three quarterly monitoring results reveal no exceedence of statewide standards at any designated Site perimeter or guard well and there is not a definitive increasing trend in contaminant levels at any interior, guard, or perimeter monitoring well that suggests a likely exceedence of statewide standards at any designated Site perimeter monitoring well in the future.

7. The Site will remain on the State Registry of Hazardous Waste or Hazardous Substance Disposal Sites ("the Registry") pursuant to Iowa Code 455H.426 and Rule 567—Chapter 148 (455B) IAC, unless the Registry listing is replaced by an environmental protection easement pursuant to Iowa Code 455H.206 and Subrule 567 IAC 137.7(3). With an environmental protection easement Vogel will agree not to use the Site in a manner which would subject anyone to a potentially unsafe exposure to hazardous substances. In particular, no on-Site water supply well will be allowed, no excavation will be allowed in the area where metals-contaminated soils were placed, and, in general, no excavation will be allowed without appropriate precautionary measures. Vogel may seek the Department's approval for exceptions to these restrictions. The Department will grant exceptions, if Vogel demonstrates to the satisfaction of the Department that the proposed activity will not cause a significant threat to human health or the environment. (Appropriate precautionary measures with respect to excavation would include compliance with OSHA worker-safety regulations and compliance with federal RCRA and/or state solid waste regulations.) The provisions associated with the Registry listing or an environmental protection easement will not be

terminated with the termination of this Consent Order. If the Registry listing is still in place upon the termination of this Consent Order the site classification will remain Class "d" - Site properly closed. Requires continued management.

8. The Site will be considered to be cleaned-up and all requirements of this Consent Order satisfied at such time that all of the following are satisfied:

- a) the enhanced free product recovery activities prescribed in Paragraph 3 above have been completed to the satisfaction of the Department;
- b) the groundwater remediation system has not been in operation for at least two years;
- c) monitoring results, per Paragraph 4 above, from the last two years have not revealed any exceedence of statewide standards for contaminants of concern in any of the designated Site perimeter monitoring wells;
- d) monitoring results, per Paragraph 4 above, from the last year have not revealed any exceedence of statewide standards for contaminants of concern in any of the designated Site guard wells.
- e) monitoring results per Paragraph 4 above reveal no definitive increasing trend in contaminant levels at any interior, guard or perimeter monitoring well, as designated in the monitoring plan, that suggests the likelihood of future non-compliance of statewide standards for contaminants of concern at any perimeter monitoring well.

9. Prior to termination of this consent order Vogel and the Department will negotiate an agreement, likely an informal agreement, for maintaining monitoring wells for the next five-year review requirement (likely due in September of 2008) of the federal Superfund program. The

agreement will include annual monitoring of all perimeter and guard wells. Vogel and the Department will negotiate subsequent agreements for any subsequent five-year reviews upon completion of each five-year review. Upon termination of this consent order Vogel may abandon all monitoring wells not needed for five-year reviews and the recovery wells in accordance with chapter 567 IAC 39. Vogel may also dismantle and remove all other appurtenances associated with the Site, including the groundwater remediation system and SVE/bioventing equipment at Vogel's discretion. However, Vogel has been informed that similar appurtenances could be necessary based upon the findings of subsequent five-year reviews performed pursuant to the federal Superfund program that conclude that the closure requirements for groundwater prescribed herein (i.e., no off-site exceedence of statewide standards in groundwater) are not being maintained.

ARTICLE VII. DESIGNATED PROJECT COORDINATORS

Project Coordinators are Robert D. Drustrup for the Department and Scott Heemstra for Vogel. The Project Coordinator so designated by each of the parties hereto shall be responsible for overseeing the duties and responsibilities of the respective parties identified herein. It is understood, however, that the project coordinator of one party shall have no responsibility for overseeing the discharge of the responsibilities of the other party. To the maximum extent possible, communications between the Department and Vogel and all documents, including reports, approvals and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

Vogel and the Department each have the right to change their respective Project

Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

ARTICLE VIII. QUALITY ASSURANCE

Vogel will utilize the Quality Assurance Plan attached with the approved October 2000, Work Plan for Excavation of Free Product and Bioventing of the Contaminated Soils, Vogel Paint & Wax Co. Site, Maurice, Iowa. The monitoring plan under Article VI, Item 1. hereof includes quality assurance provisions.

Vogel will use quality assurance, quality control, and change of custody procedures throughout all sample collection and analytical activities. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Vogel shall:

A. Ensure that Department personnel and/or Department authorized representatives are allowed access, for auditing purposes, to the laboratory(s) and to personnel utilized by Vogel for analyses and sample collection/field work.

B. Ensure that the laboratory(s) utilized by Vogel for analyses perform such analyses according to methods deemed satisfactory to the Department. All protocols to be used for analyses will be submitted or specified in a quality assurance plan.

C. Ensure that laboratory(s) utilized by Vogel for analyses participate in an acceptable quality assurance/quality control program. As part of such program, and upon request by the Department, such laboratory(s) shall perform analyses of samples provided by the Department to

demonstrate the quality of each laboratory's analytical data.

ARTICLE IX. SAMPLE ACCESS AND DATA/DOCUMENT AVAILABILITY

Vogel shall make the results of all sampling and/or tests or other data generated by Vogel, or on Vogel's behalf, with respect to the implementation of this Consent Order, available to the Department. Upon request by the Department, all laboratory deliverables, such as analytical results and QA/QC results and calculations, shall be submitted to the Department within a reasonable period of the laboratory's completion of analysis.

At the request of the Department, Vogel shall allow split or duplicate samples to be taken by the Department and/or their authorized representative, of any samples collected by Vogel pursuant to the implementation of this Consent Order. Vogel shall notify the Department not less than 5 days in advance of any sample collection activity.

The Department and/or their authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, among others: inspecting records, operating logs, and contracts related to this Consent Order; reviewing the progress of Vogel in carrying out the provisions of this Consent Order; conducting such tests as the Department or the Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to the Department by Vogel. Vogel shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

Vogel may assert a business confidentiality claim covering part or all of the information submitted, copied or recorded pursuant to the terms of this Consent Order in the manner set out in Iowa Code section 22.7 and Department Rule 561—2.5(455B) IAC. The information covered by such a claim will be disclosed by the Department only to the extent, and by the means of the procedures, set forth in Rule 561—Chapter 2 (455B) IAC. Such a claim may be made by placing on the information, at the time it is submitted to the Department, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by the Department. If confidential treatment is sought only until a certain date or until occurrence of a certain event, the notice shall so state. If no such claim accompanies the information when it is received by the Department, it may be made available to the public by the Department without further notice to Vogel.

All of the above shall not be subject to notice by the Department to Vogel of the Department's intention to exercise its rights to conduct inspections, including the authority to make copies of test, test results, pictures, sound recordings and documents, except that at least five (5) days notice shall be given to Vogel if the Department requests the presence of Vogel's consultants.

ARTICLE X. RECORD PRESERVATION

Vogel shall preserve, during the period of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession or in the possession of its

divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the work performed pursuant to this Consent Order, notwithstanding any document retention policy to the contrary. Records and documents to be preserved include only those that are submitted to the Department pursuant to this Consent Order and all background documents which form the basis of any report including, but not limited to, field books, raw results from geophysical tests and results from any other relevant field tests. After this six year period, Vogel shall notify the Department not less than sixty (60) calendar days prior to the destruction of any such documents. Upon request by the Department, Vogel shall make available to the Department such records or copies of any such records.

ARTICLE XI. RESERVATION OF RIGHTS

It is agreed between the parties that Vogel has voluntarily undertaken studies and actions under the direct supervision and at the direction of the State of Iowa as represented by the Department and its predecessors, and that Vogel intends to continue such voluntary cooperation with the Department for compliance with the terms of this Consent Order. Should it be determined by the Department subsequent to the entry of this Consent Order and prior to its termination that additional tasks not mentioned in this Consent Order need to be accomplished in order to implement the remedies selected in the ROD as modified by the July 1994 ESD and October 2000 ESD, the Department reserves the right to require Vogel to perform these additional tasks. In the event that Vogel declines to perform any additional or modified tasks, the Department reserves the right to pursue any enforcement action authorized by law which may include undertaking any

remedial design and/or remedial action, reimbursement for the costs of said work, and the seeking of injunctive relief, monetary penalties and punitive damages. Vogel reserves the right to resist any such action and to dispute the Department's determination pursuant to Article XX hereof that such additional tasks are necessary to implement the remedies selected in the ROD.

The Department and Vogel expressly reserve all other rights and defenses that each may have.

ARTICLE XII. REIMBURSEMENT OF COSTS

Vogel shall reimburse the Department for up \$25,000 in reasonable response and oversight costs incurred with respect to this Consent Order during the five-year period after the effective date of this Consent Order. Reimbursable costs shall include time spent by Department personnel, travel (subject to state maximum daily travel limitations), sample analyses, and other reasonable miscellaneous costs directly related to implementation of this Consent Order. Personnel costs shall be determined by the number of hours spent multiplied by the actual hourly rate. Indirect costs will be charged at a fixed rate in accordance with the Department's annual indirect negotiations contract.

The costs incurred by the Department with respect to this Consent Order shall be assessed by the Department on a quarterly basis. At the end of each quarter the Department shall determine the actual cost of the Department's activities during the quarter, if any, and shall notify Vogel of such. Vogel shall make payment to the Department for these activities within 30 days of receipt of the accounting. Payment shall be made to "Department of Natural Resources-Hazardous Substance

Remedial Fund" and sent to:

Shirley Christofferson
Budget/Grants Bureau
Iowa Department of Natural Resources
502 East 9th Street Des Moines, IA 50319

Vogel reserves the right to dispute any claim for reimbursement made by the Department pursuant to Article XX hereof.

The \$25,000 maximum five-year amount for reimbursement is based on an anticipated level of effort. The estimated maximum level of reimbursement does not consider any major complicating factor. The Department does not waive any claim that it may have for reimbursement of reasonable costs in excess of \$25,000.

The Department reserves the right to bring action against Vogel pursuant to applicable state law for recovery of all reasonable response and oversight costs incurred by the Department related to this Consent Order not reimbursed by Vogel. Vogel reserves the right to contest any such action brought by the Department.

ARTICLE XIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release by any party of any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or

disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

ARTICLE XIV. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. It is understood that both the Department and Vogel shall notify the other party of all applicable local, state and federal laws and regulations within their knowledge.

ARTICLE XV. LIABILITY

Neither the State of Iowa nor Vogel, nor any agent thereof shall be liable for any injuries or damage to persons or property from acts or omissions of the other, nor its servants, receivers, trustees, successors or assigns, including but not limited to firms, corporations, subsidiaries, contractors, or consultants in carrying out activities required of the parties to this Consent Order and pursuant to this Consent Order. Neither the State of Iowa, nor any agency thereof shall be held out as a party of any contract entered into by Vogel in carrying out activities pursuant to this Consent Order.

ARTICLE XVI. EFFECTIVE DATE

The effective date of this Consent Order shall be the date last inscribed on the signature page and the time frames for work to be performed pursuant to this Consent Order shall be based

upon the said date.

ARTICLE XVII. PENALTIES FOR NON-COMPLIANCE

Vogel is advised that willful violation or failure or refusal to comply with this Consent Order, or any portion thereof, may subject Vogel under Iowa Code section 455B.191 to civil penalties. Willful failure to comply with this Consent Order or any portion thereof, without sufficient cause, may subject Vogel, under Iowa Code section 455B.392 to liability for punitive damages in an amount up to three times the amount of any costs incurred by the Department as a result of Vogel's failure to take proper action. Vogel's election to invoke its rights and remedies under Article XX hereof shall not constitute a violation or a failure or refusal to comply with this Consent Order for purposes of this Article or the statutes cited herein. Vogel reserves the right to contest, on all bases available in law or equity, any such actions for penalties or damages.

ARTICLE XVIII. SUBSEQUENT MODIFICATION

This Consent Order may be amended by mutual agreement of the Department and Vogel. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by the Department and Vogel.

Any reports, plans, specifications, schedules and attachments required by this Consent Order are, upon approval by the Department, incorporated into this Consent Order. Any non-compliance with such approved reports, plans, specifications, schedules and attachments may be considered by the Department to be failure to comply with this Consent Order and may subject Vogel to appropriate penalties as provided by law.

No in-formal advice, guidance, suggestions or comments by the Department regarding reports plans, specifications, schedules, and any other writing submitted by Vogel will be construed as relieving Vogel of its obligation to obtain such formal approval as may be required by this Consent Order.

ARTICLE XIX. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Department, Vogel, their agents, successors and assigns and upon all persons, contractors, and consultants acting under or for either the Department or Vogel or both.

Vogel shall ensure that each contractor, sub-contractor, laboratory, and consultant retained to conduct any portion of the work performed pursuant to this Consent Order performs its work in accordance with the terms of this Consent Order.

ARTICLE XX. RESOLUTION OF DISPUTES

A. If the Department provides Vogel with a notice disapproving and/or requesting a modification of any submittal, plan, or any part or further refinement or revision thereof, Vogel shall, within thirty (30) days of receipt of such notice either:

- 1) Modify and submit to the Department the submittal, plan or portion thereof as revised to eliminate the deficiencies specified by the Department, in which case the disputed submittal, plan or part or further refinement or revision thereof as modified shall become final for purposes of this Consent Order upon written notification of the Department's

approval; or

2) Confer with the Department in an attempt to achieve agreement either on the disputed submittal, plan, or any part or further refinement or revision thereof, or on any disputed issues arising under Article VI. If agreement can be achieved by such conference, it will be memorialized in a joint memorandum between the parties and the disputed submittal, plan, or any part or further refinement or revisions thereof, as modified by the joint memorandum, shall become final for purposes of this Consent Order on the effective date of such memorandum.

B. As to any notification to Vogel pursuant to Article XI, wherein the Department identifies additional tasks, which may be necessary in order to implement the remedy selected in the ROD, Vogel shall either:

1) Within forty five (45) days of receipt of such notice submit to the Department a plan to implement such additional tasks, or

2) Within thirty (30) days of receipt of such notice confer with the Department in an attempt to achieve agreement on any disputed part or portion of the said additional tasks. If agreement can be achieved by such conference, on all or any part of the said additional tasks, it will be memorialized in a joint memorandum between the parties and shall become final for purposes of this Consent Order on the effective date of such memorandum.

C. If agreement concerning the disputed submittal, plan, or any part or further refinement or revision thereof, or additional tasks, cannot be achieved by procedures outlined in subparagraphs A.(1) or A.(2) or B.(1) or B.(2), the Department shall request, in writing, within

ninety (90) days of the original notice of disapproval and/or modification or notice of additional task(s), that Vogel modify the disputed item in accordance with the Department's notice of disapproval and/or modification or submit a plan to implement the additional task(s), as applicable.

D. If agreement concerning the disputed submittal, plan or any part or further refinement or revision thereof, or additional tasks, cannot be achieved as herein before set out, the Director of the Department shall determine the appropriate remedy which the Department shall pursue. The Department and Vogel shall be provided an opportunity, prior to the decision of the Director, to present oral or written arguments to the Director. Reasonable notice of the date and time of consideration by the Director shall be provided.

E. Within sixty (60) days of the receipt of an accounting from the Department for reimbursement of costs, Vogel shall notify the Department of any disputed cost or costs and the reason(s) for the dispute. Within thirty (30) days of receipt of the disputed costs, the Department shall confer with Vogel in attempt to achieve agreement. If an agreement can be achieved by such conference, the Department shall submit a revised accounting to Vogel and payment shall be made in accordance with Article XII hereof. If agreement of the disputed costs cannot be achieved, the Director of the Department shall determine the appropriate remedy, which the Department shall pursue. The Department and Vogel shall be provided an opportunity, prior to the decision of the Director, to present oral and/or written arguments to the Director. Reasonable notice of the date and time of consideration by the Director shall be provided.

F. None of the foregoing provisions shall prohibit any party from pursuing appropriate judicial or other remedies as provided by law on the disputed portions of any submittal, plan, or

additional tasks; or from seeking such further and additional relief; or from undertaking such response actions as may be necessary to protect human health or the environment.

The time periods contained in this Article may be extended by the written agreement of the parties.

ARTICLE XXI. FORCE MAJEURE

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, Vogel shall have the burden of proof that the delay was caused by circumstances beyond the reasonable control of Vogel which could not have been overcome by due diligence. Vogel shall promptly notify the Department's Project Coordinator orally and shall, within fourteen (14) calendar days of such oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, and measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which Vogel intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Vogel, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. Vogel shall adopt all reasonable measures to avoid or minimize delay. Failure of Vogel to comply with the notice requirements of this paragraph shall constitute a waiver of Vogel's right to request an extension of the time for performance of the requirements of this Consent Order. Increased costs in performance of the terms of this Consent Order or ordinary changes in economic circumstances shall not be considered circumstances beyond the control of Vogel.

In the event that Vogel and the Department cannot agree that any delay in the achievement

of the requirements of this Consent Order, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of Vogel, the Department shall provide Vogel a notice of disapproval and the dispute shall be resolved in accordance with Article XX, Resolution of Disputes.

ARTICLE XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Vogel's receipt of written notice from the Department that all of the terms of this Consent Order have been completed to the satisfaction of the Department. Such notice shall be issued by the Department within sixty (60) days of receipt by the Department of all information that demonstrates satisfactory completion of all the terms of this Consent Order, as summarized in Article VI, paragraph 8. Upon the Department's provision of such notice, the Department shall release and forever discharge, and the Department covenants not to sue or take administrative action against, Vogel, its affiliated corporations, agencies, business associations, entities or organizations, and each and every one of their respective agents, directors, officers, members, employees, representatives, attorneys, predecessors, successors, heirs, executors, administrators and assigns, for all further liability to the State of Iowa of any nature arising out of or in connection with the requirements of this Consent Order. Such notice shall not act as a bar to liability for such future actions as may be deemed necessary based upon the five-year reviews conducted pursuant to the federal Superfund program.

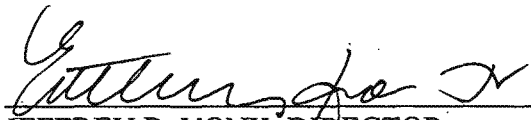
The Department shall promptly and without unreasonable delay respond to all submitted plans, proposals, or submissions as required by this Consent Order.

XXIII. CONTRIBUTION PROTECTION

With regards to claims for contribution against Vogel for matters addressed in this Consent Order, the Vogel asserts that they are entitled to such protection from contribution actions or claims as is provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2). The Department does not dispute this claim of contribution protection. Final determination of the applicability of federal contribution protection can only be made by U.S. EPA or other authorized federal agencies. Nothing in this paragraph shall release the parties from any contractual indemnity agreements they may have.

Any questions regarding this order shall be directed to:

Jon Tack
Legal Services Bureau
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319



JEFFREY R. VONK, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

05-23-03
DATE



DREW F. VOGEL, PRESIDENT
VOGEL PAINT & WAX CO., INC.

5/9/03
DATE